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Trafficking in persons, especially women and children

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ezeilo, submitted in accordance with Human Rights Council resolutions 8/12 and 17/1.

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Report of the Special Rapporteur on trafficking in persons, especially women and children

Summary

The present annual report is submitted to the General Assembly in accordance with Human Rights Council resolutions 8/12 and 17/1 and covers the period from 1 August 2010 to 31 July 2011.

The report is divided into three main sections: an introduction, an outline of the activities undertaken by the Special Rapporteur during the reporting period and a thematic focus on the right to an effective remedy for trafficked persons. The report discusses different forms of substantive remedies, including restitution, recovery, compensation, satisfaction and guarantee of non-repetition. It also highlights the importance of procedural rights of access to these substantive remedies, such as the provision of information, legal assistance, interpretation services and regularization of residence status. In conclusion, the Special Rapporteur offers recommendations to States in effectively implementing the right to an effective remedy. Finally, the draft basic principles on the right to an effective remedy are included in the annex.

Contents

		Page
I.	Introduction	3
II.	Activities of the Special Rapporteur	3
	A. Participation in conferences and consultations	3
	B. Country visits	4
III.	Thematic analysis: the right to an effective remedy for trafficked persons	4
	A. Introduction	4
	B. The right to an effective remedy for trafficked persons	4
	C. Additional observations after the presentation of the Human Rights Council report	7
	D. Draft basic principles on the right to effective remedy	9
	E. Conclusions and recommendations	10
Annex		
	Draft basic principles on the right to an effective remedy for trafficked persons	12

I. Introduction

1. The present report is the third submitted to the General Assembly by the current Special Rapporteur on trafficking in persons, especially women and children, pursuant to Human Rights Council resolutions 8/12 and 17/1. It highlights her activities from 1 August 2010 to 31 July 2011. The main thematic focus of the report is the right to an effective remedy for trafficked persons.

II. Activities of the Special Rapporteur

2. With respect to the activities carried out from 1 August 2010 to 1 March 2011, the Special Rapporteur makes reference to her previous report, submitted to the Human Rights Council at its seventeenth session (A/HRC/17/35). Her activities from 1 March 2011 to 31 July 2011 are briefly set out below.

A. Participation in conferences and consultations

3. On 31 May 2011, the Special Rapporteur delivered a speech at a side event, "Access to justice and compensation for trafficked persons", organized by the Permanent Mission of Germany to the United Nations, the Permanent Mission of the Philippines to the United Nations, Anti-Slavery International, La Strada International and the Organization for Security and Cooperation in Europe. On 1 June 2011, the Special Rapporteur also participated as a panellist in a side event, "Deported without justice: barriers to trafficked persons accessing remedies", organized by Franciscans International and the Global Alliance against Traffic in Women.

4. On 7 June 2011, the Special Rapporteur participated as a key-note speaker in a one-day conference, "Child trafficking in Scotland", organized by the Scottish Commissioner for Children and Young People in Edinburgh, the United Kingdom of Great Britain and Northern Ireland.

5. On 21 and 22 June 2011, the Special Rapporteur participated in the World Justice Forum III, organized in Barcelona, Spain, by the World Justice Project. She moderated a panel on "Human trafficking and the rule of law" and discussed, inter alia, the existing national, regional and international laws to combat human trafficking, effective protection for victims and good practices from around the world that contribute to the prevention of human trafficking.

6. On 4 July 2011, the Special Rapporteur convened an expert meeting on "Prosecution of trafficking in persons cases: integrating a human rights-based approach in the administration of criminal justice" in Geneva. Fifteen experts, mostly from prosecution and law enforcement backgrounds, participated in this one-day meeting to discuss progress, challenges and lessons learned in prosecuting trafficking in persons cases while ensuring respect for the human rights of trafficked persons.

7. From 11 to 13 July 2011, the Special Rapporteur participated in the Association of Southeast Asian Nations workshop on criminal justice responses to trafficking in persons in Singapore, hosted by Singapore's Ministry of Home Affairs.

B. Country visits

8. The Special Rapporteur visited Argentina from 6 to 12 September 2010 and Uruguay from 13 to 17 September 2010 at the invitation of the Governments. The full reports on these visits were submitted to the seventeenth session of the Human Rights Council in June 2011 (A/HRC/17/35/Add.4, A/HRC/17/35/Add.3, respectively).

9. At the time of writing, the Special Rapporteur plans to visit Thailand from 8 to 19 August 2011 at the invitation of the Government. She also plans to visit Australia in November 2011. Full reports on these visits will be presented to the Human Rights Council at its twentieth session in 2012.

III. Thematic analysis: the right to an effective remedy for trafficked persons

A. Introduction

10. The present report is a follow-up to the Special Rapporteur's report to the seventeenth session of the Human Rights Council (A/HRC/17/35). The Special Rapporteur wishes to draw the attention of Member States to her analysis, conclusions and recommendations in the Human Rights Council report, including the draft basic principles on the right to an effective remedy for trafficked persons, which are reproduced in the annex to the present report.

11. This report seeks to highlight the main findings, conclusions and recommendations of the Human Rights Council report. It also presents the Special Rapporteur's additional observations on the issue, as well as the feedback of Member States and other stakeholders that she received after the presentation of the Human Rights Council report.

B. The right to an effective remedy for trafficked persons

12. The right to an effective remedy is a fundamental human right for all persons, including trafficked persons, which States must respect, protect and fulfil in accordance with international human rights law. It is also a well-established doctrine of international law that a State has an obligation to provide remedies where an act or omission is attributable to it and constitutes a breach of an international obligation of the State. In the context of trafficking in persons, States are under an obligation to provide remedies for trafficked persons where they fail to exercise due diligence to prevent and combat trafficking in persons or to protect the human rights of trafficked persons.

13. While discussions on the right to an effective remedy for trafficked persons tend to focus on compensation, compensation is only one aspect of this right. It encompasses recovery, restitution, satisfaction and guarantees of non-repetition, as well as a set of ancillary procedural rights that enable trafficked persons to exercise the right to an effective remedy in a meaningful manner. Such procedural rights of access to substantive remedies may include the rights to legal, medical, psychological, social, administrative and other assistance.

14. Restitution is aimed at restoring the situation that existed prior to the violation. Measures of restitution in the context of trafficked persons may include, for example: the release of the trafficked person from detention (whether such detention is imposed by traffickers, the State or any other entity);[1] return of property such as identity and travel documents and other personal belongings; recognition of legal identity and citizenship; safe and voluntary repatriation to the country of origin; and assistance and support necessary to facilitate social integration.

15. As discussed in the report to the Human Rights Council, restitution, as conventionally understood, may not be a suitable form of remedy where simply returning the trafficked person to the pre-existing situation may place him or her at the risk of further human rights violations and being re-trafficked. From this perspective, restitution implies States' obligations to undertake broader measures to address root causes of trafficking and to provide necessary reintegration support to trafficked persons, so as to minimize any risk of re-trafficking. For instance, where trafficked women and girls have been subjected to sexual and gender-based violence, they may face discrimination, social stigma, communal and family ostracism upon return to their families and communities, thereby resulting in their re-victimization. In this context, measures to address the root causes of trafficking, such as gender discrimination and inequality, play a crucial role in ensuring effective restitution of trafficked women and girls.

16. The Special Rapporteur also noted in the Human Rights Council report that returning a trafficked person to his or her country of origin may not be an appropriate form of remedy where he or she has lost legal, cultural or social ties with the country of origin and it is no longer in his or her best interest to return to it. For instance, it is conceivable that a child who is trafficked to another country and perpetuated in this situation over decades may lose his or her social and cultural identity in the country of origin. Where these factors exist, restitution may involve reintegration of the trafficked person into the host community or resettlement in a third country.

17. Recovery includes medical and psychological care, as well as legal and social services. As trafficking often causes severe physical and psychological consequences for the victims, recovery is a crucial form of remedy. In the Human Rights Council report, the Special Rapporteur noted with concern that in some States, recovery services are only available to certain categories of trafficked persons at the exclusion of others, such as men and children who are internally trafficked, and that access to recovery services is made conditional on the capacity or willingness of trafficked persons to cooperate with law enforcement authorities. Further, she expressed concern about the absence in many States of a "reflection and recovery period", during which trafficked persons may escape the influence of traffickers, recover psychological stability to consider their options, and make an informed decision as to whether to cooperate with law enforcement authorities without the risk of being removed from the country. This period is not only an integral element of recovery, but also the fundamental first step in seeking other forms of reparations, such as compensation. The security and well-being of trafficked persons, which may be facilitated by the reflection and recovery period, is an essential prerequisite for trafficked persons in seeking compensation.

[1] Anne T. Gallagher, *The International Law of Human Trafficking* (New York, Cambridge University Press, 2010), p. 366.

18. Compensation should be provided for economic assessable damage to the extent that such damage cannot be made good by restitution. It may be provided as payment for a wide range of injury, loss or damage caused by the offender, including, for example: costs of the medical, physical, psychological or psychiatric treatment required by the victim; lost income and due wages; legal fees and other similar costs; and payment for non-material damages, resulting from moral, physical or psychological injury, emotional distress, pain and suffering.

19. In many States, it is possible in theory to seek compensation through criminal, civil or labour proceedings. However, as discussed in the Human Rights Council report, various obstacles render such a possibility simply illusory in practice. While different factors affect the efficacy of criminal, civil and labour proceedings, common obstacles for trafficked persons to seek compensation through legal proceedings include: failure to identify trafficked persons and accord them regular residence status; lack of adequate support in recovery of trafficked persons; lack of information and knowledge on the part of trafficked persons; lack of free legal aid available; lack of capacities, knowledge and experience on the part of the judiciary and lawyers in seeking compensation for trafficked persons; and inadequate witness protection programmes to guarantee the safety and security of trafficked persons and their family members.

20. In some States, trafficked persons may be able to claim compensation through general compensation schemes for victims of crime. However, it is still not common for trafficked persons to successfully obtain compensation through State-funded compensation schemes, as access to such schemes may be restricted by certain eligibility criteria, such as nationality, residence status or types of crimes that the victim suffered.

21. Some of these obstacles in seeking compensation clearly show that procedural rights of access to remedies are critical preconditions in realizing the substantive right to remedies for trafficked persons. For instance, States must provide trafficked persons with information relating to their rights and mechanisms available to seek remedies, as they would not be able to seek remedies unless they are aware of this essential information. As judicial and administrative proceedings are often complex in many jurisdictions, legal assistance is also crucial for trafficked persons, especially where they are not familiar with the legal system of the country concerned. In addition, regular residence permits in countries where remedies are being sought are an important prerequisite, as it would be very difficult for trafficked persons to seek remedies if they are at risk of expulsion or have already been expelled. The Special Rapporteur found, however, that these measures are often not available to trafficked persons in practice.

22. Finally, even when compensation orders are made against traffickers, it is extremely difficult to enforce such orders, as identified traffickers may not have adequate assets to satisfy an award of compensation, or law enforcement authorities may lack the expertise, training and resources to freeze and confiscate traffickers' assets.[2]

[2] Organization for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights, *Compensation for Trafficked and Exploited Persons in the OSCE Region* (Warsaw, 2008), pp. 40-42.

23. In addition, the Special Rapporteur stressed in the Human Rights Council report that in the case of trafficked children, special considerations apply in developing and implementing responses aimed at the realization of the right to an effective remedy. At a minimum, the realization of the right to an effective remedy for trafficked children should be guided by the general principles of the Convention on the Rights of the Child. The principle of particular importance is that the best interests of the child shall be a primary consideration in all actions concerning children. Thus, the best interests of the child need to be carefully considered before deciding the course of action and the type of remedy to be sought. For instance, the child's participation in criminal proceedings may not be in his or her best interest in some cases where, for example, he or she is interviewed repeatedly, required to provide testimony in court in the presence of the traffickers, subjected to hostile questioning by the traffickers or their legal representative, or effective witness protection is not in place to guarantee the privacy and security of the child and his or her family members. Further, this formula based on the best interests of the child suggests that compensation may not always be a suitable form of remedy for trafficked children. In some cases, it may be more appropriate to seek reparative measures geared towards building a comprehensive child protection system that guarantees children's rights, such as the right to education, the right to health and the right to physical and psychological recovery and social reintegration in the case of child victims of exploitation.

24. Pursuant to the Convention on the Rights of the Child, States are also required to respect the rights of children to express their views freely in all matters affecting them and to provide them with the opportunity to be heard in any relevant judicial and administrative proceedings. To this end, the child should be given effective access to information on all matters affecting his or her interests, such as his or her situation, entitlements, services available and the family reunification and/or repatriation processes.[3] Further, the need to ensure active participation of children implies that the child should be provided with legal representation without costs to the child, as well as with interpretation into the native language of the child, as necessary.

C. Additional observations after the presentation of the Human Rights Council report

25. The Special Rapporteur engaged in further dialogues with a number of stakeholders following the presentation of the Human Rights Council report and found that the obstacles discussed above in successfully obtaining remedies are still common in many parts of the world. As far as compensation is concerned, research conducted by the European Action for Compensation for Trafficked Persons project ("COM.PACT project") demonstrated that although there is an emerging awareness about the right to compensation for trafficked persons and the legal frameworks in these European countries allow trafficked persons to claim compensation, the actual receipt of a compensation payment by a trafficked person is extremely rare. While there is a variety of factors that negatively affect trafficked persons' ability to claim compensation, the most common reasons include the lack of knowledge on the part

[3] United Nations Children's Fund (UNICEF), "Guidelines on the protection of child victims of trafficking" (New York, 2006), guideline 2.5.

of trafficked persons about their right to compensation, restrictive eligibility criteria for State-funded compensation funds, the failure of law enforcement authorities to confiscate assets or to use confiscated assets to compensate trafficked persons and the lack of jurisprudence on compensation for trafficked persons. Further, discussions at the international round table on "Compensation for trafficked persons in Belarus, Moldova and Ukraine", organized by La Strada Belarus on 10 June 2011, revealed that such obstacles as the lack of information about the right to compensation, the lack of knowledge on the part of judges and lawyers about the victims' right to compensation and the absence of legal aid, significantly reduce trafficked persons' chances of successfully claiming compensation.

26. Thus, significant challenges still remain in ensuring the enjoyment of the right to an effective remedy by trafficked persons. There are positive signs, however, that States increasingly take the right to an effective remedy into consideration in developing and implementing anti-trafficking responses. The Special Rapporteur was encouraged by solid commitments expressed by a number of States during the interactive dialogue at the Human Rights Council to operationalize this right at the national level. Norway, for instance, noted that the provision of essential information to victims of trafficking in an appropriate manner is often a challenge and pledged to use the Special Rapporteur's report as an inspiration for improvement. Australia mentioned important changes to programmes to support for trafficked persons, including the provision of an extended period for reflection and recovery. The Philippines also informed the Special Rapporteur that its anti-trafficking legislation provides for the establishment of a national trust fund that uses fines and properties confiscated from convicted traffickers to provide trafficked persons with a variety of services for their recovery, such as emergency shelters, counselling, free legal services, medical and psychological treatment. Other States, such as Brazil, the Republic of Korea and Greece, shared with the Special Rapporteur information on their efforts geared towards the realization of the right to an effective remedy, such as the provision of counselling, housing, health care and legal assistance.

27. While noting these positive developments, the Special Rapporteur underlines that a comprehensive and holistic response aimed at the realization of this right is critical. As discussed in the Human Rights Council report, the realization of the right to an effective remedy hinges upon a variety of interrelated factors. Accurate identification of trafficked persons is a prerequisite for trafficked persons to be able to exercise the right to an effective remedy, as it is almost impossible to do so if they are misidentified as irregular migrants or criminal offenders. They must be also provided with a reflection and recovery period as well as the support and assistance necessary for their recovery on a non-conditional basis, so that they can make an informed decision as to what course of action they would like to pursue. If trafficked persons wish to seek compensation for the harms suffered, they need to be equipped with information about their rights and the avenues available to exercise their rights, legal assistance, interpretation and other necessary services, and regular residence status. Trafficked persons must be recognized as holders of rights from the moment that they are identified as trafficked and States must implement responses underpinned by all of these elements necessary for trafficked persons to enjoy the right to an effective remedy. Ad hoc measures designed to address only some of these aspects would be hardly sufficient if the right to an effective remedy were to be fully realized.

D. Draft basic principles on the right to an effective remedy

28. In order to guide States in operationalizing the right to an effective remedy, the Special Rapporteur submitted the draft basic principles on the right to an effective remedy for trafficked persons in the Human Rights Council report. The draft basic principles are reproduced in the annex to the present report. The Special Rapporteur noted with appreciation that a number of States, including Brazil, Costa Rica, Greece, the Republic of Moldova, Slovakia and Venezuela (Bolivarian Republic of), expressly welcomed the draft basic principles during the interactive dialogue at the Human Rights Council.

29. The draft basic principles are based on existing international human rights law and standards and do not represent new norms of human rights. They are designed to bring clarity to the concept of the right to an effective remedy and to elaborate specific factors to be taken into account when this right is applied to trafficked persons. For example, the draft basic principles explicitly spell out that States have obligations to ensure that adequate procedures are in place to enable quick and accurate identification and that trafficked persons are not subjected to discriminatory treatment in law or in practice, as these are preconditions in exercising the right to an effective remedy in the context of trafficked persons. Further, reflecting the complex nature of the crime of trafficking, the draft basic principles specify that restitution may require States to provide trafficked persons with temporary or permanent residence status where a safe return to the country of origin cannot be guaranteed or is otherwise not in the best interest of the trafficked person. With respect to recovery, the draft basic principles provide that States shall ensure that trafficked persons' access to assistance and other benefits are not dependent on their cooperation in legal proceedings, as this is a common obstacle for trafficked persons in accessing such assistance and other benefits. Lastly, the draft basic principles provide that States have a duty to ensure that trafficked persons are allowed to lawfully remain in the country in which the remedy is being sought for the duration of any proceedings, having regard to the fact that trafficked persons are often treated as irregular migrants subject to detention and deportation.

30. During the interactive dialogue at the Human Rights Council, some States raised an important question as to what might be the next step and what legal status the Special Rapporteur envisaged for the draft basic principles. As mentioned during the interactive dialogue, the draft basic principles are still under development and constitute only an initial step in the efforts to effectively implement the right to an effective remedy for trafficked persons. Thus, she would welcome further input and suggestions by States and other stakeholders to further refine the draft basic principles and to consider what should be the next step. The Special Rapporteur stresses, however, that States' commitments and sense of ownership in this process of shaping the draft basic principles are crucial. While the draft basic principles are intended to guide not only States but also practitioners working with trafficked persons, the Special Rapporteur considers it critical that States, as duty-bearers, commit to fulfil their obligations to respect, protect and fulfil the right to an effective remedy and to utilize the draft basic principles in order to understand what these obligations entail in practice. Thus, the Special Rapporteur wishes to have opportunities to engage with States to discuss the content of the draft basic principles through intergovernmental consultations. In this process, the Special Rapporteur would welcome a strong leadership by members of the Human Rights

Council and the General Assembly, and the Group of Friends United against Human Trafficking in galvanizing the political will of Member States.

E. Conclusions and recommendations

31. The Special Rapporteur reiterates that States have an obligation to provide remedies for trafficked persons where they fail to exercise due diligence to prevent and combat trafficking in persons or to protect the human rights of trafficked persons. Furthermore, States have a duty to respect, protect and fulfil the right to an effective remedy under international human rights law. To this end, States' responses to trafficking should be guided by the objective of implementing the right to an effective remedy for trafficked persons. Trafficked persons must be recognized as holders of rights from the moment when they are identified as trafficked and States should implement measures to facilitate their realization of these rights. As different components of the right to an effective remedy are interrelated with each other, it is crucial for States to provide for a continuum of assistance and support, aimed at restitution, recovery, compensation, satisfaction and guarantees of non-repetition, as appropriate in each individual case.

32. In the efforts to enhance the implementation of the right to an effective remedy for trafficked persons, the Special Rapporteur refers States to her recommendations in the Human Rights Council report. In particular, the Special Rapporteur highlights the following recommendations:

33. As a very first step in ensuring that trafficked persons have the opportunity to seek remedies as victims of human rights violations, States should ensure that relevant authorities and officials, such as police, border guards and immigration officials, are adequately trained in the identification of trafficked persons to allow rapid and accurate identification of trafficked persons.

34. States should provide trafficked persons with a reflection and recovery period, as well as assistance in realizing their full recovery on a non-conditional basis, duly taking into account the individual circumstances and needs of each trafficked person.

35. In order to enable trafficked persons to exercise their right to compensation in a meaningful manner, States should provide trafficked persons with the necessary means, assistance and status, namely, access to information, free legal assistance and other assistance necessary to ensure their full recovery, and regular residence status. In addition, States should guarantee the right to privacy, safety and witness protection for trafficked persons taking part in legal proceedings.

36. States should intensify training for the judiciary, prosecutors and lawyers on laws and issues pertaining to the rights of trafficking in persons and relevant legal procedures.

37. States should adequately train law enforcement officials in identifying, tracing, freezing and confiscating assets connected to the crime of trafficking, and explicitly enact legislation that provides that the confiscated assets are to be used to compensate trafficked persons.

38. Where State-funded compensation schemes for victims of crime exist, States should abolish eligibility criteria that have the effect of preventing trafficked persons from seeking compensation, such as nationality and long-term residence requirements.

39. States should ensure that they provide trafficked persons with information on the right to a remedy, mechanisms and procedures available to exercise this right, and how and where to obtain the necessary assistance. To facilitate this process, States should develop guidelines on the appropriate form, content and language of the information to be provided to trafficked persons and ensure that the guidelines are properly applied.

40. States should provide legal assistance to trafficked persons on a free-of-charge basis as an essential precondition for all trafficked persons to exercise their right to an effective remedy. States should ensure that lawyers providing such assistance have received adequate training in the rights of trafficked persons including children, and in effective communication with victims of human rights violations.

41. States should provide trafficked persons with temporary residence permits during the duration of any legal proceedings on an unconditional basis. States should also provide trafficked persons with temporary or permanent residence permits on social and humanitarian grounds, where a safe return to the country of origin is not guaranteed or a return would not otherwise be in the best interests of the trafficked person for reasons related to his or her personal circumstances, such as the loss of citizenship or cultural and social identity in the country of origin.

42. States should ensure that the best interests of the child are a primary consideration in all decisions or actions that affect trafficked children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.

43. States should encourage trafficked children to express their views and give them due consideration in accordance with their age and maturity. In order to facilitate this process, States should ensure that trafficked children are equipped with information on all matters affecting their interests, including their situation, legal options, entitlements and services available to them, and processes of family reunification or repatriation. Further, States should ensure that trafficked children have access to legal, interpretative and other necessary assistance, provided by professionals trained in child rights and how to communicate with trafficked children.

Annex

Draft basic principles on the right to an effective remedy for trafficked persons

1. Rights and obligations

1. Trafficked persons as victims of human rights violations have the right to an effective remedy for harms committed against them.

2. All States, including countries of origin, transit and destination, are obliged to provide or facilitate access to remedies that are fair, adequate and appropriate to all trafficked persons within their respective territory and subject to their respective jurisdiction, including non-citizens, for harms committed against them.

3. The right to an effective remedy encompasses both a substantive right to reparations and procedural rights necessary to access reparations.

4. In substance, trafficked persons should be provided with adequate reparations for the harms suffered, which may include restitution, compensation, recovery, satisfaction, and guarantees of non-repetition.

5. Trafficked persons should also be provided with access to a competent and independent authority in order to successfully obtain reparations. This necessitates, at a minimum, the provision of:

(a) Information concerning their rights, the reparations available and the existence of and modalities for accessing reparation mechanisms;

(b) Legal, medical, psychological, social, administrative and other assistance necessary in seeking remedies;

(c) A reflection and recovery period, followed by residence status while trafficked persons seek remedies.

2. Realizing the right to a remedy

6. States shall:

(a) Ensure that adequate procedures are in place to enable quick and accurate identification of trafficked persons and provide adequate training to law enforcement and other agencies that might come in contact with trafficked persons;

(b) Ensure that trafficked persons are not subjected to discriminatory treatment in law or in practice on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, including their age, their status as victims of trafficking, their occupation or types of exploitation to which they have been subjected;

(c) Give due consideration to individual circumstances of trafficked persons to ensure that remedies are centred on the empowerment of trafficked persons and full respect for their human rights. At a minimum, States should "do no harm" and ensure that remedial proceedings are not detrimental or prejudicial to the rights of trafficked persons and their psychological and physical safety.

(a) Restitution

7. States shall:

(a) Place the best interests of trafficked persons at the centre in providing measures of restitution;

(b) Provide trafficked persons with temporary or permanent residence status as a form of remedy where a safe return to the country of origin cannot be guaranteed, may place them at risk of persecution or further human rights violations, or is otherwise not in their best interests;

(c) Effectively address the root causes of trafficking in order to ensure that trafficked persons are not returned to the pre-existing situation which places them at risk of being re-trafficked or further human rights violations.

(b) Recovery

8. States shall:

(a) Provide a non-conditional reflection and recovery period, during which trafficked persons are provided with measures necessary for the physical, psychological and social recovery, including, but not limited to: appropriate housing, counselling and information about their situations and legal rights; medical, psychological and material assistance; and employment, educational and training opportunities;

(b) Ensure that trafficked persons' access to assistance and other benefits are under no circumstances dependent upon their cooperation in legal proceedings.

(c) Compensation

9. States shall:

(a) Ensure that laws, mechanisms and procedures are in place to enable trafficked persons, if they desire, to:

(i) Obtain civil damages for trafficking-related offences, including breaches of labour laws;

(ii) Secure awards or orders from criminal courts for compensation from persons convicted of trafficking-related offences;

(iii) Gain access to compensation from the State for injuries and damages;

(b) Address the common obstacles for trafficked persons to obtain compensation for their material and non-material damage. To this end, they should ensure that:

(i) All trafficked persons have a legally enforceable right to obtain compensation, irrespective of their immigration status and of whether their perpetrators have been convicted;

(ii) Trafficked persons are fully informed of their legal rights, including their rights to have access to remedies through judicial, labour and administrative proceedings, promptly and in a language and form they understand;

(iii) Trafficked persons seeking to access remedies are provided with necessary assistance to this end, including social assistance, free and qualified legal aid and representation, and, where necessary, qualified interpreters, regardless of their immigration status;

(iv) Trafficked persons are allowed to lawfully remain in the country in which the remedy is being sought for the duration of any criminal, civil, labour or administrative proceedings, without prejudice to any claim they may have to the right to remain on a more permanent basis as a remedy in itself;

(v) Laws and procedures are in place to support the seizure of the proceeds of trafficking and confiscation of traffickers' assets, and explicitly indicate that such proceeds and assets are intended in the first instance to compensate trafficked persons and in the second instance for general provision of remedies to trafficked persons;

(vi) Effective measures are in place for the enforcement of reparation judgements including foreign judgements.

10. In cases of trafficked women and girls who have been subjected to sexual and gender-based violence, States should take into account potential risks of psychological harm, stigma and communal and family ostracism that judicial proceedings may impose on them and provide measures to afford adequate protection to those women and girls affected, while creating opportunities to seek compensation through non-judicial avenues.

3. Trafficked children

11. States shall:

(a) Ensure that the best interests of the child are a primary consideration in providing trafficked children with remedies, taking into account the individual circumstances of the child, including his or her age, upbringing, ethnic, cultural and linguistic background and protection needs;

(b) Respect the child's right to express his or her views freely in all matters affecting the child. To this end, States should provide trafficked children with effective access to information on all matters affecting their interests, such as their situation, entitlements, services available and the family reunification and/or repatriation process;

(c) Take measures to ensure adequate and appropriate training, in particular legal and psychological training, for persons working with trafficked children on specific rights and obligations in cases involving children.